

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of new)	NOTICE OF ADOPTION
Rules I through X regarding)	
definitions, licensing and)	
application requirements, ownership)	
change, examination of title lenders,)	
duration of loans, extensions,)	
reports, schedule of charges,)	
employees' character and fitness, and)	
procedural rules for hearing and)	
discovery proposed for adoption under)	
the Montana Title Loan Act)	

TO: All Concerned Persons

1. On July 14, 2005, the Division of Banking and Financial Institutions published MAR Notice No. 2-2-357 regarding the public hearing on the proposed adoption of the above-stated rules at page 1125 of the 2005 Montana Administrative Register, issue number 13. On July 28, 2005, the division published MAR Notice No. 2-2-358 to amend the reasonable necessity pertaining to the above-stated rules at page 1334 of the 2005 Montana Administrative Register, issue number 14. On October 6, 2005, the division published MAR Notice No. 2-2-366 regarding the extension of the comment period of the above-stated rules at page 1839 of the 2005 Montana Administrative Register, issue number 19.

2. After consideration of the comments received, the Division of Banking and Financial Institutions has adopted new rules III (2.59.1405), VI (2.59.1410), and X (2.59.1417) exactly as proposed.

3. The division has adopted the following rules as proposed but with the following changes from the original proposal, matter to be stricken interlined, new matter underlined:

RULE I (2.59.1401) DEFINITIONS For the purposes of the Montana Title Loan Act and this subchapter, the following definitions apply:

- (1) remains as proposed.
- ~~(2) "Day" means 24 hour period of time.~~
- (3) and (4) remain as proposed but are renumbered (2) and (3).
- ~~(5) (4) "Original title loan" means the title loan agreement which is the basis for taking possession of the title and perfecting a security interest on in the titled property.~~
- (6) remains as proposed but is renumbered (5).
- ~~(7) "Redemption period" means 20 days after licensee has provided notice of default plus three days for mailing.~~
- (8) remains as proposed but is renumbered (6).

AUTH: 31-1-802, MCA

IMP: 31-1-804, 31-1-810, 31-1-812, MCA

RULE II (2.59.1402) LICENSING AND APPLICATION REQUIREMENTS – EXCEPTIONS (1) through (2)(b) remain as proposed.

(c) federal and state chartered credit unions;

(d) through (5) remain as proposed.

AUTH: 31-1-802, MCA

IMP: 31-1-804, 31-1-805, 31-1-811, MCA

RULE IV (2.59.1406) EXAMINATION OF TITLE LENDERS (1) The department shall ~~annually~~ conduct an examination of each title loan licensee's lending operations to ensure compliance with both statute and administrative rule.

(2) through (2)(b)(i) remain as proposed.

(ii) use of the ~~department approved~~ loan agreement on file with the department; and

(iii) remains as proposed.

AUTH: 31-1-802, MCA

IMP: 31-1-810, MCA

RULE V (2.59.1409) DURATION OF LOANS – INTEREST – EXTENSIONS

(1) Each original title loan must have a term of 30 days. ~~No interest or fees may be charged beyond the 30-day period without a bona fide extension of the loan in accordance with (2).~~

(2) The loan agreement may provide for automatic 30-day renewal periods beyond the original term if principal and interest are not paid in full on the maturity date. Any automatic 30-day renewal period must be clearly stated on the face of the loan agreement in bold, capital letters. In addition to any other disclosures that may be required by law, licensees must provide the borrower, in the original title loan agreement or by addendum, a statement of the principal and interest due over a six-month period if the borrower fails to make any payments as set forth in Illustration A. Such statement must be initialed by the borrower at the time of the original loan and include the borrower's affirmation that the borrower has been shown and read the statement.

Illustration A

	<u>Principal</u>	<u>Interest Per Month at 25%</u>	<u>Accrued Interest at 25%</u>	<u>Total Amount Due</u>
<u>Original Loan</u>	<u>\$500.00</u>	<u>\$125.00</u>	<u>\$125.00</u>	<u>\$625.00</u>
<u>Renewal 1</u>	<u>\$500.00</u>	<u>\$125.00</u>	<u>\$250.00</u>	<u>\$750.00</u>
<u>Renewal 2</u>	<u>\$500.00</u>	<u>\$125.00</u>	<u>\$375.00</u>	<u>\$875.00</u>
<u>Renewal 3</u>	<u>\$500.00</u>	<u>\$125.00</u>	<u>\$500.00</u>	<u>\$1,000.00</u>
<u>Renewal 4</u>	<u>\$500.00</u>	<u>\$125.00</u>	<u>\$625.00</u>	<u>\$1,125.00</u>

<u>Renewal 5</u>	<u>\$500.00</u>	<u>\$125.00</u>	<u>\$750.00</u>	<u>\$1,250.00</u>
<u>Renewal 6</u>	<u>\$500.00</u>	<u>\$125.00</u>	<u>\$875.00</u>	<u>\$1,375.00</u>

~~(2) Automatic extensions or renewals are prohibited. Each extension or renewal must be specifically agreed upon in writing by the borrower at the time the extension is granted.~~

~~(3) On any loan containing an automatic 30-day renewal provision, at the time of each renewal licensees must provide, in person or by mail at the borrower's last known address, an updated truth in lending statement.~~

~~(4) Interest may not compound from one extension or renewal to another.~~

~~(3) Except as provided in [New Rule VI] for reduction of principal, each agreed upon extension must have a term of 30 days and must contain:~~

- ~~(a) total principal amount financed;~~
- ~~(b) total finance charges;~~
- ~~(c) total amount financed;~~
- ~~(d) new annual percentage rate calculations;~~
- ~~(e) new maturity date;~~
- ~~(f) new collateral redemption date;~~
- ~~(g) payment of accrued interest from previous loan; and~~
- ~~(h) signature of the borrower;~~

~~(4) (5) A licensee shall not exceed extend or grant any additional credit other than that which was granted in the original title loan agreement without first requiring full payment of all principal and interest due on the original title loan, or any subsequent extensions, and release releasing the security interest in the titled property.~~

~~(5) remains as proposed but is renumbered (6).~~

AUTH: 31-1-802, MCA

IMP: 31-1-816, MCA

RULE VII (2.59.1413) REPORTS (1) remains as proposed.

~~(a) any instances of theft or missing funds within 10 days of the discovery of each occurrence the theft;~~

~~(b) and (c) remain as proposed.~~

AUTH: 31-1-802, MCA

IMP: 31-1-815, MCA

RULE VIII (2.59.1414) SCHEDULE OF CHARGES (1) Every licensee under the Montana Title Loan Act shall file with the ~~commissioner~~ department in duplicate, at the time of filing application for such license or license renewal, a full and accurate schedule of all charges, fees, and costs as follows:

~~(a) through (2) remain as proposed.~~

AUTH: 31-1-802, MCA

IMP: 31-1-816, 31-1-817, ~~31-4-818~~ 31-1-818, MCA

RULE IX (2.59.1416) EMPLOYEES' CHARACTER AND FITNESS

(1) Licensees are responsible for conducting appropriate background checks on all ~~applicants for employment~~ new employees hired after May 1, 2006. At a minimum, each licensee shall:

(a) through (2) remain as proposed.

(3) Verification of compliance with this rule shall occur during annual ~~exams~~ examinations. Licensees are required to keep accurate employment records on each employee to ensure that the department is able to verify compliance.

AUTH: 31-1-802, MCA

IMP: 31-1-805, MCA

4. The following comments were received and appear with the division's responses:

Comment 1: Comments were received in regard to New Rule I(2) and whether defining a day, as twenty-four hours in each customer's day count, would be different depending upon the time they received their loan.

Response 1: The division agrees and will amend the rule accordingly by deleting that subsection.

Comment 2: Comments were received in regard to the New Rule I(5) stating that the definition of a title loan in the statute should not be amended by rule.

Response 2: The term "original title loan" is used in these rules for the sole purpose of differentiating between the first original title loan and all subsequent extensions or renewals as those terms are used in these new rules. It is not intended to change the definition of a title loan as it is stated in the statute.

Comment 3: Comments were received in regard to New Rule I(7) stating that adding three days to the redemption period is a legislative function not a regulatory function.

Response 3: The division agrees and New Rule I(7) shall be deleted accordingly.

Comment 4: A comment was received in support of New Rule I(7) and the addition of a three-day mailing period for redemption.

Response 4: The division disagrees. Adding three days to the redemption period is a legislative function and cannot be addressed through an administrative rule.

Comment 5: A comment was received in regard to New Rule III suggesting that the division add the sentence "or when any owner first acquires 25% or more ownership" at the end of this rule.

Response 5: The division believes that New Rule III as written contains sufficient language.

Comment 6: Comments were received in regard to New Rule V(1) and whether interest may be charged on title loans after the original 30-day period or any subsequent 30-day period has expired without a written agreement by the borrower. Comments state that such a rule would reward those borrowers that habitually pay late and are contrary to legislative intent.

Response 6: The division has decided not to enact the interest-limiting provisions of New Rule V(1) at this time. The licensees will be required to provide additional disclosures with each original title loan agreement in order to inform the borrower of the financial implications of failing to make payments on the title loan in a timely manner.

Comment 7: A comment was received supporting the 30-day interest limitation in New Rule V(1).

Response 7: The division considered this comment as well as other comments submitted that were in opposition to New Rule V(1). The division agrees with the comments in opposition to New Rule V(1) and adopts New Rule V(1) as amended. See Comment 6.

Comment 8: Comments were received in regard to New Rule V(2) stating that the rule is inconsistent with the statute in that the statute allows unilateral renewals of title loans while New Rule V(2) requires a new agreement.

Response 8: The division agrees and modifies New Rule V(2) accordingly. Instead of a new agreement, licensees will only be required to provide additional disclosures when a loan is extended or renewed.

Comment 9: A comment was received in regard to New Rule V(3)(h) stating that requiring a signature for a renewal or extension was impractical since most borrowers either mail in payments or drop them off after hours.

Response 9: The division agrees and amends New Rule V(3)(h) accordingly. The division has deleted New Rule V(3), but will require an updated truth in lending statement on any loan renewal when the loan agreement contains an automatic 30-day renewal provision. The updated truth in lending statement must be provided to the borrower at the time of each renewal in person or by mail at the borrower's last known address. The updated truth in lending statement contains most of the information that was required by New Rule V(3).

Comment 10: Comments were received in regard to New Rule VI(2)(b) in that it was in contradiction of New Rule V(2). New Rule V(2) prohibits automatic renewals, but New Rule VI(2)(b) requires the principal reduction to begin exactly at 180 days, which assumes that the renewals run continuously without interruption.

Response 10: The division acknowledges the contradiction and therefore amends New Rule V(2) accordingly. New Rule V(2) has been amended to allow automatic renewals. Therefore, New Rule VI(2)(b) is consistent with the automatic renewal provisions in New Rule V and requires principal pay down to begin at 180 days.

Comment 11: A comment was received in regard to New Rule V(4) stating that title licensees should be able to extend additional credit to a customer while a current loan is outstanding.

Response 11: The division disagrees. A title loan may only be issued upon an unencumbered state title for personal property. The original title loan encumbers the title and a new loan may not be consummated without first paying the original loan in full. In addition, allowing refinancing of title loans enables avoidance of the principal pay down provisions of the Montana Title Loan Act. New loans on other unencumbered titled personal property are not prohibited.

Comment 12: Comments were received in regard to New Rule VII that the ten-day reporting period contained in New Rule VII is too difficult for licensees to comply.

Response 12: The division disagrees. Ten days is sufficient time to comply with the reporting requirements outlined in the rule. However, the rule is amended to clarify that the ten-day period begins from discovery of each incident.

Comment 13: Comments were received in regard to New Rule IX stating concerns about employees being prohibited from employment because of a divorce or other civil judgment.

Response 13: The division recognizes the concern, but believes that the statute is sufficiently clear that only criminal behavior or civil judgments that show financial dishonesty such as fraud are subject to the restrictions in the statute. Divorces or other civil judgments that do not pertain to fraud are not grounds for rejection or termination of employment.

Comment 14: Comments were received in regards to New Rule IX stating that the rule should only require an "attempt" to verify employment, and that such attempt should be done after the applicant has been hired.

Response 14: New Rule IX requires that licensees verify and document previous employment prior to hiring. If a licensee cannot verify employment, then they are taking the risk in hiring that person. All the licensee is required to do is document that they were unable to verify employment.

BY: /s/ Janet R. Kelly
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By: /s/ Dal Smilie
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Certified to the Secretary of State March 27, 2006.